

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Review of the Spectrum Sharing Plan Among)	
Non-Geostationary Satellite Orbit Mobile)	IB Docket No. 02-364
Satellite Service Systems in the 1.6/2.4 GHz)	
Bands)	
)	
Amendment of Part 2 of the Commission's)	
Rules to Allocate Spectrum Below 3 GHz for)	ET Docket No. 00-258
Mobile and Fixed Services to Support the)	
Introduction of New Advanced Wireless)	
Services, including Third Generation)	
Wireless Systems)	

**OPPOSITION OF IRIDIUM SATELLITE, LLC TO PETITION FOR
RECONSIDERATION OF GLOBALSTAR LLC**

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EXECUTIVE SUMMARY

In the *Big LEO Spectrum Sharing Decision*, the FCC established a sharing plan in the 1618.25-1621.35 MHz band that promotes more efficient use of the spectrum and revises the outdated Big LEO band plan. On September 8, 2004, Globalstar filed a Petition for Reconsideration of the Commission's *Big LEO Spectrum Sharing Decision*. Iridium opposes Globalstar's Petition because it is procedurally infirm and provides no valid legal reasoning for reconsideration of the Commission's decision.

The Commission should dismiss Globalstar's Petition, because it improperly relies on new facts and flawed legal arguments not supported by the record or Commission precedent. Globalstar's Petition violates Section 1.106(c) of the Commission's rules by attempting to introduce new facts and offer new proposals not previously presented to the Commission during this proceeding. In addition, contrary to well-settled Commission precedent, Globalstar attempts to reargue issues already debated and decided by the Commission.

Even if Globalstar's Petition were not procedurally infirm, its proposals are wholly without merit. First, Globalstar's request that the Commission require Iridium to make an affirmative demonstration of an additional need for spectrum before it can access any portion of the 3.1 MHz in the 1618.25-1621.35 MHz band ignores the fact that throughout this proceeding, Iridium has demonstrated, and the Commission has recognized, its urgent and compelling need for additional spectrum. Second, Globalstar's requests that the Commission change the boundary for shared spectrum to allow Globalstar unencumbered access to two full channels above 1616 MHz similarly has no merit. There is no basis in the Commission's regulations for Globalstar's claims; indeed, the Commission has repeatedly noted that Globalstar has never had unencumbered access

to Big LEO spectrum. Third, Globalstar's request that the Commission set ground rules for coordination of sharing spectrum ignores the fact that the Commission typically does not mandate spectrum sharing rules. Furthermore, Globalstar and Iridium have been sharing spectrum without Commission assistance since April 2003 pursuant to the Commission grant of special temporary authority to Iridium.

Finally, the Commission has already considered and denied Globalstar's argument that it is entitled to a hearing pursuant to Section 316 and should reject Globalstar's attempts to reargue the same position. The Commission properly invoked its rulemaking authority in the *Big LEO Spectrum Sharing Decision* by making changes to the Big LEO band plan that are general in nature and equally applicable to all licensees. Furthermore, the Commission did not modify Globalstar's license; Globalstar retains access to all of the spectrum previously assigned to it.

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**OPPOSITION OF IRIDIUM SATELLITE, LLC TO PETITION FOR
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Iridium Satellite, LLC ("Iridium"), by its attorneys, hereby respectfully opposes the Petition for Reconsideration filed by Globalstar LLC ("Globalstar") in the proceeding referenced above.¹ For two years, the Commission considered and took comment on Iridium's request for reallocation of the mobile satellite service ("MSS") spectrum in the 1.6/2.4 GHz bands.² Based on the extensive record developed in this proceeding, the Commission made a reasonable policy decision to permit shared access to the 1618.25-1621.35 MHz band by the CDMA and TDMA Big LEO MSS operators.³

¹ Petition for Reconsideration of Globalstar LLC, IB Dkt. No. 02-364, ET Dkt. No. 00-258 (filed Sept. 8, 2004) ("Globalstar Petition").

² See Petition for Rulemaking of Iridium Satellite, LLC, IB Dkt. No. 02-364 (filed July 26, 2002).

³ *Review of the Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands; Amendment of Part 2 of the Commission's*

In its Petition, Globalstar questions the Commission's conclusion that additional spectrum sharing in the Big LEO band would serve the public interest. More specifically, Globalstar reiterates its claim that the record does not support Iridium's access to additional spectrum and that the adopted band plan will not protect Globalstar's operations. Towards this end, Globalstar provides a Technical Appendix containing new twists on the same set of facts and offers new proposals designed to preserve its fortuitous access to MSS spectrum.⁴ Finally, Globalstar re-asserts its request for a hearing under Section 316 of the Act.

As demonstrated below, Globalstar's Petition is procedurally infirm and offers no valid rationale for reconsideration of the *Big LEO Spectrum Sharing Order*.⁵ Accordingly, the Commission should deny it and uphold the revised Big LEO band plan.

I. THE FCC SHOULD DISMISS GLOBALSTAR'S PETITION BECAUSE IT INTRODUCES ALLEGEDLY NEW FACTS, OFFERS NEW PROPOSALS, AND REARGUES THE COMMISSION'S CONCLUSIONS

The Commission should reject Globalstar's Petition because it relies on novel facts and proposals, which Globalstar has had ample opportunity to raise throughout this extensive proceeding, as well as repetitive arguments previously considered and decided by the

Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems, IB Dkt. No. 02-364, ET Dkt. No. 00-258, Report and Order, Fourth Report and Order and Further Notice of Proposed Rulemaking, FCC 04-134 (July 16, 2004) ("*Big LEO Spectrum Sharing Decision*").

⁴ First, Globalstar proposes that the Commission require Iridium to make an affirmative demonstration of an additional need for spectrum before it can access any portion of the 3.1 MHz in the 1618.25-1621.35 MHz band pursuant to the *Big LEO Spectrum Sharing Order*. Second, Globalstar seeks access to Iridium's 1621.35-1626.5 MHz band "in a channel-by-channel (Channels 10-13) amount equal to whatever channels Iridium attempts to coordinate for use in the 1618.25-1621.35 MHz band." Finally, Globalstar asks the Commission to raise the boundary of the 1618.25 band to 1618.725, so as to protect 0.5 MHz of Globalstar's spectrum in that band. See Globalstar Petition at 7-8.

⁵ Iridium takes no position of the petitions for reconsideration filed by other parties concerning issues related to spectrum sharing in the S-band.

Commission. The Commission's rules do not permit Globalstar to treat a petition for reconsideration as an opportunity to obtain Commission review of facts and proposals that were not, but could have been, asserted at an earlier stage of this proceeding. Nor do the Commission's rules afford Globalstar the right to reconsideration of settled conclusions based on arguments already decided upon by the Commission. Globalstar's Petition is a blatant attempt to reargue the merits of this proceeding, and the Commission should accordingly deny it outright.

A. Globalstar's Petition Violates Section 1.106(c) By Attempting To Introduce New Facts and Proposals Not Previously Presented To The Commission

Section 1.106 of the Commission's rules requires the FCC to dismiss Globalstar's Petition because it relies on new facts and proposals that have not changed, were not unknown and consideration of which would not serve the public interest.⁶ Section 1.106(c) provides that a petition for reconsideration "which relies on facts not previously presented" may be granted only if it falls into one of the following categories enumerated in Section 1.106(b)(2) of the Commission's Rules: (1) the petition relies on facts or circumstances "which have changed since the last opportunity to present such matters;" (2) the petition relies on facts that were unknown and could not reasonably have been learned by the petitioner "through the exercise of ordinary diligence;" or (3) the Commission determines that consideration of the facts relied on is in the public interest.⁷ The new facts and proposals presented by the Globalstar Petition do not fall within any of these categories.

Several portions of the Technical Appendix attached to Globalstar's Petition offer new analyses of the current and projected effects of sharing in the 1618.25-1621.35 MHz band and how such sharing allegedly will cause interference to the Globalstar system in the future. For

⁶ 47 C.F.R. § 1.106(c).

⁷ 47 C.F.R. § 1.106(b)(2).

example, for the first time in the proceeding, Globalstar attempts to estimate the link budgets between itself and Iridium and the effects that sharing would have on Globalstar's operations.⁸ Regardless of the miscalculations that Globalstar has created in this estimate,⁹ the introduction of such information at this time amounts to the submission of facts not previously provided, which, as shown below, is clearly prohibited by Section 1.106 of the Commission's rules.

Globalstar's Technical Appendix fails to identify any facts that have changed since its last opportunity to present those matters to the Commission. Instead, Globalstar simply reinterprets the same evidence it has submitted to the Commission on numerous occasions.¹⁰ Nor does it rely on facts that were in any way unknown to Globalstar at prior stages of this proceeding. Nothing precluded Globalstar from filing this information during the two-year rulemaking proceeding. Furthermore, Globalstar presents no public interest benefits to condone wasting the Commission's resources through reconsideration of new twists to the same set of facts.

Indeed, FCC precedent supports the dismissal of Globalstar's Petition. The Commission has held that the submission in a petition for reconsideration of technical analyses of evidence already considered by the Commission does not constitute "changed circumstances" or qualify as facts previously unknown to a petitioner within the meaning of Section 1.106(b)(2).¹¹ In *Ramapo Indian Hills Regional High School District*, the Commission denied a petition for

⁸ See Globalstar Petition, Technical Appendix at 6-7.

⁹ See Reply Comments of Iridium Satellite, LLC, IB Dkt. No. 02-364, at 7 (Sept. 23, 2004) ("Iridium Spectrum Sharing Reply Comments").

¹⁰ Iridium's Spectrum Sharing Reply Comments identified several flaws in Globalstar's identification and interpretation of the facts set forth by Globalstar. See, e.g., Iridium Spectrum Sharing Reply Comments at 6-9.

¹¹ *Ramapo Indian Hills Regional High School District*, Memorandum Opinion and Order, 8 FCC Rcd 649 (1993).

reconsideration where the petitioner attempted to introduce an engineering study not previously submitted to the Commission to support factual claims the petitioner had already made in prior stages of the proceeding.¹² The Commission held that the petitioner did not meet the standards of Section 1.106(b)(2) because the technical analysis did not constitute “‘new facts or changed circumstances’ that were unknown to [the applicant] at the time of its last opportunity to present such matters to the Commission.”¹³ Here, the Commission similarly should find that Globalstar’s Technical Appendix fails to provide new facts or changed circumstances sufficient to warrant reconsideration pursuant to Section 1.106.¹⁴

Globalstar’s Petition also offers three new proposals for the Commission’s consideration, none of which were ever raised in any of Globalstar’s numerous prior filings and *ex parte* communications with the Commission.¹⁵ These proposals are merely an eleventh-hour effort by Globalstar to preserve its fortuitous position as the sole MSS operator with access to 27 MHz of Big LEO spectrum intended to be shared by four CDMA MSS operators. However, regardless of whether Globalstar’s proposals have merit, which they clearly do not, they are not validly raised at this stage in the proceeding under Section 1.106(c).

¹² *Id.*, 8 FCC Rcd at 649.

¹³ *Id.* at 649.

¹⁴ Moreover, Globalstar previously used some of the same inaccurate facts earlier in this proceeding. As such, the Commission properly considered and rejected these facts, and, under Section 1.106(c), should not reconsider them again.

¹⁵ First, Globalstar proposes that the Commission require Iridium to make an affirmative demonstration of an additional need for spectrum before it can access any portion of the 3.1 MHz in the 1618.25-1621.35 MHz band pursuant to the *Big LEO Spectrum Sharing Order*. Second, Globalstar seeks access to Iridium’s 1621.35-1626.5 MHz band “in a channel-by-channel (Channels 10-13) amount equal to whatever channels Iridium attempts to coordinate for use in the 1618.25-1621.35 MHz band.” Finally, Globalstar asks the Commission to raise the boundary of the 1618.25 band to 1618.725, so as to protect 0.5 MHz of Globalstar’s spectrum in that band. See Globalstar Petition at 7-8

The Commission has noted that new proposals are not new facts or changed circumstances within the meaning of Section 1.106. In *Jones Eastern of the Outer Banks, Inc.*, the Commission denied a petition for reconsideration of an FCC order holding that the petitioner was not in compliance with the Commission's main studio rule.¹⁶ The petitioner sought reconsideration of the Commission's decision on the basis of a new staffing proposal offered by the petitioner. However, the Commission rejected the petition, noting, "the Petitioner's decision to assign a management person to the main studio represents neither a 'newly discovered fact' nor a 'changed circumstance,' but is merely a new proposal."¹⁷ Similarly, the Commission should reject the proposals presented in the Globalstar Petition, as they provide no basis for reconsideration under the standards set forth in Section 1.106 of the Commission's rules.

B. Commission Precedent Disallows Globalstar's Attempts To Reargue Issues Already Debated And Decided By The Commission

The Commission has consistently made clear that "reconsideration will not be granted for the purpose of debating matters on which [the Commission has] already deliberated and spoken."¹⁸ Despite well-settled precedent on this point, Globalstar attempts to raise the very same issues on reconsideration that the Commission has already expressly decided. For example, throughout the record in this docket, Globalstar has repeatedly maintained, despite the Commission's findings to the contrary, that Iridium has not demonstrated sufficient need for additional spectrum and that coordination of spectrum in the 1618.25-1621.35 MHz band

¹⁶ *Petition for Reconsideration and/or Clarification of Jones Eastern of the Outer Banks, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 6800, 6802 (¶ 12) (1992).

¹⁷ *Id.*

¹⁸ *Broadcast Associates, Inc.*, Memorandum Opinion and Order and Notice of Forfeiture, 11 FCC Rcd 15479, 15481 (¶ 6) (1996); *see also Isis Broadcast Group*, Memorandum Opinion and Order, 8 FCC Rcd 24, 24 (¶ 3) (1992); *Sandab Communications Ltd.*, 13 FCC Rcd 14413, 14429 (¶ 44) (1998).

between Iridium and Globalstar is not feasible. In spite of Globalstar's creative efforts to repack these arguments, they have been fully considered and, upon much deliberation, decided upon by the Commission. The Commission must not permit Globalstar to continue to reargue the same issues on reconsideration.

II. EVEN IF THE NOVEL PROPOSALS RAISED BY GLOBALSTAR WERE NOT PROCEDURALLY INFIRM, THEY ARE WITHOUT MERIT

A. Iridium Has Provided The Commission With Extensive Documentation Of Its Needs For Additional Spectrum

Throughout this proceeding, Iridium has demonstrated a compelling and urgent need for additional spectrum in order to meet existing demands and improve the quality of service provided to its current and future customers.¹⁹ Iridium has consistently supported its claims by offering extensive technical analyses documenting current strains on its system due to inadequate spectrum. Yet, despite this clear evidence, Globalstar continues to insist that Iridium has provided no evidence of a need for additional spectrum. In fact, Globalstar goes so far as to suggest that the Commission require Iridium to again demonstrate its need for spectrum before gaining access to any portion of the 3.1 MHz on a channel-by-channel basis.²⁰

In its January 2003 Spectrum Report, Iridium demonstrated that steadily and rapidly growing usage rates of Iridium services had led to increased call drop rates and reduced call establishment rates both globally and domestically, and that absent an increased allocation of spectrum, such rates would continue to proliferate at a dramatic pace. Iridium later provided additional evidence of adverse drop and establishment rates in its monthly STA spectrum usage

¹⁹ See, e.g., Iridium Satellite Spectrum Report, IB Dkt. No. 01-185, at 3-4 (Jan. 13, 2003) ("Iridium Spectrum Report"); Comments of Iridium Satellite, LLC, IB Dkt. No. 02-364, at 32-34 (July 11, 2003) ("Iridium Comments on NPRM"); Reply Comments of Iridium Satellite, LLC, IB Dkt. No. 02-364, at 4-6 (July 25, 2003) ("Iridium Reply Comments on NPRM").

²⁰ Globalstar Petition at 7.

reports to the International Bureau.²¹ Iridium's technical analysis indicated that these failures were due not only to demands imposed on the Iridium system as a result of military conflicts in the Middle East, but also as a result of the natural growth trends of Iridium's core services, such as its significant operations in rural and underserved markets throughout the world.²² Iridium has also documented that insufficient access to spectrum has stifled Iridium's ability to compete in the MSS market by prohibiting it from providing the full range of quality services offered by other wireless providers and its competitors.²³

The Commission has recognized Iridium's need for spectrum on numerous occasions. In its series of STA grants to Iridium, the International Bureau found that "[c]ontrary to Globalstar's assertion, we find that Iridium has demonstrated its continued need for the additional 1.25 MHz of spectrum."²⁴ In addition, on several occasions, the Bureau concluded that "Iridium has presented extraordinary circumstances warranting a grant of temporary authorization for operations in the 1620.10-1621.35 MHz band."²⁵ Finally, in the *Big LEO Spectrum Sharing Decision*, the Commission found that "[b]oth the CDMA and the TDMA MSS operator set forth compelling arguments for utilizing the spectrum, so we believe that sharing the

²¹ See, e.g., Iridium Comments on NPRM; Iridium Reply Comments on NPRM; Letter from Peter D. Shields, Counsel to Iridium Satellite, LLC, to James L. Ball, Chief of the Policy Division, FCC (Dec. 18, 2003); *Ex parte* presentation of Iridium Satellite, LLC, IB Dkt. No. 02-364 (Mar. 17, 2004).

²² Iridium Spectrum Report at 2; Iridium Comments on NPRM at 17-18; Iridium Reply Comments on NPRM at 4-6.

²³ See Iridium Comments on NPRM at 21; Iridium Reply Comments on NPRM at 7; Comments of Iridium Satellite LLC, IB Dkt. No. 02-364, at 3 (Sept. 8, 2004) ("Iridium Comments").

²⁴ See, e.g., *Iridium Constellation, LLC Request for Special Temporary Authority For a Mobile Satellite System in the 1.6 GHz Frequency Band*, 19 FCC Rcd 10401, 10407 (¶ 8) (2004).

²⁵ *Id.*, 19 FCC Rcd at 10410 (¶ 17); *Iridium Constellation, LLC Request for Special Temporary Authority For a Mobile Satellite System in the 1.6 GHz Frequency Band*, Order, 18 FCC Rcd 25814, 25820 (¶ 15) (2003).

spectrum would be the most equitable solution at this time.”²⁶ The Commission has accepted Iridium’s spectrum need showings, even if Globalstar does not.

B. Globalstar’s Arguments About Unencumbered Spectrum Have No Basis In Fact, Nor In Commission Regulations

Globalstar, for the first time in this proceeding, requests that the Commission change the boundary for shared spectrum to 1618.725 MHz rather than 1618.25 MHz.²⁷ Globalstar attempts to justify this change by claiming that it needs two full, unencumbered channels above 1616 MHz (Channels 6 and 7).²⁸ This reasoning is absurd because Globalstar has never been assigned unencumbered spectrum in any amount. As the Commission recognized again in this proceeding, Globalstar has always had shared access to Big LEO spectrum.²⁹ In fact, there is no discussion in the Commission’s rules or the record of this proceeding concerning “unencumbered” spectrum as defined by Globalstar.

Globalstar also asserts “that it needs access to all nine L-band CDMA channels in order to meet current and immediately future service needs” and further theorizes that Iridium could inefficiently load its spectrum to occupy the shared 3.1 MHz of Big LEO spectrum.³⁰ Globalstar’s allegations are wholly without merit. As previously noted, Iridium’s network configuration spreads its communications traffic over all spectrum resources available. In its

²⁶ *Big LEO Spectrum Sharing Decision*, ¶ 47.

²⁷ Globalstar Petition at 8-10.

²⁸ *Id.* at 9.

²⁹ *Big LEO Spectrum Sharing Decision*, ¶ 53 (“[T]he Commission never granted unconditional authority for Globalstar to operate across the entire 1610-1621.35 MHz band originally assigned for shared use by multiple CDMA systems.”).

³⁰ Globalstar Petition at 6.

response to a series of Commission questions, Iridium described its system operations and, in particular, how its SVRT design avoids channel loading:

The overall dynamic channel management functionality, as implemented by the Iridium system, is referred to as Space-Vehicle Real-Time (SVRT), and was implemented (at significant financial cost) for the sole purpose of maximizing the system's spectral efficiency. The basic philosophy underpinning the SVRT design is that all L-band channels (i.e., frequency/timeslot pairs) represent a pool of resources that should be universally shared and continuously managed in order to maximize capacity of each satellite and the entire system. Since channels can be dynamically assigned throughout the entire system, the goal of the SVRT functionality is continuously to monitor the system for co-channel interference and orchestrate the necessary channel assignment/re-assignment changes necessary to eliminate reuse-channel conflicts – without terminating ongoing calls.³¹

As such, the system operations of the Iridium network conclusively refute Globalstar's speculation that Iridium would inefficiently load its network.

C. The Commission Need Not Set Ground Rules For Coordination Of Sharing Spectrum

Globalstar's request that the Commission impose restrictions on Iridium's usage of the 1618.25-1621.35 MHz band³² is just a further attempt by Globalstar to deny Iridium access to additional spectrum. In the *Big LEO Spectrum Sharing Decision*, the Commission found that Globalstar and Iridium "should be able to coordinate with minimal Commission intervention, particularly because the existing TDMA and CDMA MSS operators both have been operating on some of the 3.1 megahertz of spectrum without Commission assistance since April 2003."³³ Globalstar offers no serious challenge to the Commission's finding.

³¹ See Letter from Peter D. Shields, Counsel to Iridium Satellite, LLC to James L. Ball, Chief of the Policy Division, International Bureau, FCC, IB Dkt. No. 02-364, at 13-14 (Dec. 18, 2003).

³² Globalstar Petition at 6.

³³ *Big LEO Spectrum Sharing Decision*, ¶ 53.

Furthermore, the Commission's decision not to mandate spectrum coordination rules is consistent with its prior precedent and current approach toward spectrum management. For example, the Commission did not create any sharing rules to govern sharing between CDMA Big LEO MSS license holders.³⁴ Similarly, the FCC has permitted 2 GHz MSS licensees to share spectrum but did not establish sharing criteria.³⁵ Finally, as the Commission noted, its decision to minimize its involvement in the coordination of shared spectrum use will "promote flexible and market-oriented spectrum policies that will encourage more technologically innovative and economically efficient uses of the spectrum."³⁶

III. GLOBALSTAR IS NOT ENTITLED TO A HEARING PURSUANT TO SECTION 316

A. The Commission Correctly Determined That Globalstar Is Not Entitled To A Hearing Under Section 316

In its Petition, Globalstar argues that the Commission's actions in this proceeding reduce its access to the L-band and S-band frequencies specified in its license and therefore trigger the hearing requirement in Section 316 of the Communications Act.³⁷ Globalstar presented this identical claim in its Comments,³⁸ and the Commission denied it in its *Big LEO Spectrum Sharing Decision*. The Commission fully considered Globalstar's position and found that "this

³⁴ *Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands*, Report and Order, 9 FCC Rcd 5936, 5956 (¶¶ 47, 48) (1994) ("*Big LEO Order*").

³⁵ *The Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band*, Report and Order, 15 FCC Rcd 16127, 16140 (¶ 21) (2000).

³⁶ *Big LEO Spectrum Sharing Decision*, ¶ 55 (citing *Establishment of an Interference Temperature Metric to Quantify and Manage Interference and to Expand Available Unlicensed Operation in Certain Fixed, Mobile and Satellite Frequency Bands*, 18 FCC Rcd 25309, 25311, ¶¶ 5-6 (2003)).

³⁷ Globalstar Petition at 13-18.

³⁸ See Joint Comments of L/Q Licensee, Inc., Globalstar, L.P. and Globalstar USA, L.L.C., IB Dkt. No. 02-364, at 31 (July 11, 2003).

spectrum sharing plan does not fall under section 316 because the spectrum sharing plan has been adopted pursuant to a rulemaking proceeding that generally affects all MSS providers operating in that band.”³⁹

Globalstar’s Petition alleges no legal basis for reconsideration of this conclusion. It is well-settled that the Commission will not grant reconsideration for the purpose of redebating matters on which the agency has already deliberated and spoken.⁴⁰ Because Globalstar’s Petition largely reiterates matters that the Commission has already considered and rejected and does not rely on new facts not previously known to Globalstar, changed circumstances, or material errors in the *Big LEO Spectrum Sharing Decision*,⁴¹ the Commission should not reconsider Globalstar’s Section 316 argument.

B. The Commission Properly Used Its Rulemaking Authority In This Proceeding

Globalstar further argues that the Commission improperly invoked its rulemaking authority in the *Big LEO Spectrum Sharing Decision* to avoid the adjudicatory procedures required by Section 316.⁴² Globalstar asserts that the changes to CDMA Big LEO operations result in substantial restrictions on Globalstar’s operations alone, and therefore the Commission cannot take such action pursuant to its rulemaking authority. Globalstar is wrong.

The changes the Commission made to the Big LEO spectrum band are general in nature and apply to all Big LEO MSS and BRS station licensees equally. As the Commission stated:

³⁹ *Big LEO Spectrum Sharing Decision*, ¶ 85.

⁴⁰ *WWIZ, Inc.*, 37 F.C.C. 685, 686 (¶ 2) (1964), *aff’d sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965); *Sandab Communications Ltd.*, 13 FCC Rcd at 14429; *Liberty Productions*, Memorandum Opinion and Order, 7 FCC Rcd 7581, 7585 (¶ 29) (1992).

⁴¹ *Isis Broadcast Group*, 8 FCC Rcd at 24 (¶ 3).

⁴² Globalstar Petition at 13.

“Our actions in this Order simply modify the U.S. Table of Frequency Allocations to promote greater spectrum efficiency by allowing other operators to use the spectrum when the prior CDMA MSS applicants failed to implement their operations.”⁴³ Indeed, the Commission routinely modifies the U.S. Table of Frequency Allocations pursuant to its rulemaking authority.⁴⁴ Globalstar cannot have it both ways. On the one hand, Globalstar argues that it is one of several CDMA Big LEO licensees when it wants to exaggerate its spectrum needs.⁴⁵ On the other hand, Globalstar argues that the changes to the Big LEO band plan affect only Globalstar when it is useful for its procedural argument.

Moreover, the dicta from two Court of Appeals decisions quoted by Globalstar do not support its argument.⁴⁶ In *California Citizens Band Assoc. v. FCC*, the Ninth Circuit found that “the Commission promulgated rules which are general in nature and intended to affect all licensees in the same class equally,” making the proceeding at issue a rulemaking “in both form and effect.”⁴⁷ Similarly, in *Committee for Effective Cellular Rules v. FCC*, the D.C. Circuit found that “the FCC need not engage in evidentiary hearings required for modification of a particular license . . . ‘when . . . a new policy is based upon the general characteristics of an

⁴³ *Big LEO Spectrum Sharing Decision*, ¶ 85.

⁴⁴ See, e.g., *Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems*, ET Docket No. 00-258, Seventh Report and Order, FCC 04-246, Appendix C (rel. Oct. 21, 2004); *Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands; Review of the Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands*, 18 FCC Rcd 1962, 1966 (¶ 4) (2003).

⁴⁵ See, e.g., Comments of Globalstar LLC, IB Dkt. No. 02-364, at 6 (Sept. 8, 2004); Ex Parte Presentation of Globalstar, L.P., IB Dkt. No. 02-364, at 4-5 (Sept. 11, 2003) (“Globalstar Sept. 11, 2003 Ex Parte”).

⁴⁶ Globalstar Petition at 13.

⁴⁷ 375 F.2d 43, 51 (9th Cir. 1967). See also *Am. Airlines, Inc. v. Civil Aeronautics Bd.*, 359 F.2d 624 (D.C. Cir. 1966).

industry.”⁴⁸ Similarly, in this proceeding the Commission has properly used its rulemaking authority to adopt a new policy based on the general characteristics of an industry and intended to affect all licensees in the same class equally.

C. The Commission’s Actions Do Not Implicate Section 316 Because They Do Not Modify Globalstar’s License

Globalstar’s argument that it deserves a Section 316 hearing because the *Big LEO Spectrum Sharing Decision* modifies its license is equally strained. The Commission *did not* modify Globalstar’s license.⁴⁹ In fact, Globalstar retains access to *all* of the spectrum previously assigned to it. In this proceeding, Globalstar has consistently argued that it is “sharing” the CDMA spectrum with other licensees,⁵⁰ which is exactly the decision that the Commission reached in this order. The sharing requirements imposed by the *Big LEO Spectrum Sharing Decision* on some of the 27 MHz allocated to CDMA Big LEO MSS operators do not rise to the level of a modification of Globalstar’s license.

Language in both the Commission order establishing the initial Big LEO band plan and Globalstar’s Big LEO MSS license confirm that Globalstar had no permanent right to exclusive use of the spectrum assigned to it. The *Big LEO Order* expressly stated that, in the event that only one CDMA licensee came into existence, the Commission would consider how to reallocate the relevant spectrum “*in the context of a rulemaking*, based upon the circumstances that have

⁴⁸ 53 F.3d 1309, 1319 (D.C. Cir. 1995) (quoting *WBEN, Inc. v. United States*, 396 F.2d 601, 617-18 (2nd Cir. 1968)).

⁴⁹ *Big LEO Spectrum Sharing Decision*, ¶ 86 (“Globalstar’s license is not changing as [sic] result of today’s decision – CDMA MSS operators still have access to the Big LEO spectrum previously assigned to them.”).

⁵⁰ *See, e.g.*, Globalstar Sept. 11, 2003 Ex Parte, at 5 (“Globalstar designed its system to share spectrum and to operate with asymmetric band assignments.”).

developed at that time.”⁵¹ Indeed, it was a specific “[c]ondition[] to the [p]lan” that there would be a “[r]eduction in [s]pectrum” in the event of a “[s]ingle CDMA [s]ystem.”⁵² The terms of Globalstar’s original license reflects this basic condition: “the *temporary assignment* of . . . any particular frequencies . . . is subject to change by summary order of the Commission on 30 days’ notice *and does not confer any permanent right to use the ... spectrum.*”⁵³ Because Globalstar possesses no unconditional right to use its spectrum allocation, any reallocation of its spectrum is not a “modification” of its license subject to Section 316.

Finally, despite Globalstar’s protests, the Commission has in no way violated Globalstar’s due process rights in this proceeding. As the two-year-old record in this proceeding demonstrates, the Commission afforded Globalstar ample notice and multiple opportunities to comment, lobby and otherwise present its arguments.

⁵¹ *Big LEO Order*, 9 FCC Rcd at 5960 (emphasis added).

⁵² *Id.* at 59596 n.65.

⁵³ *In re Application of Loral/Qualcomm Partnership, L.P. For Authority to Construct, Launch, and Operate Globalstar, a Low Earth Orbit Satellite System to Provide Mobile Satellite Services in the 1610-1626.5 MHz/2483.5-2500 MHz Bands*, 10 FCC Rcd 2333, 2337, (¶ 33) (1995) (emphasis added).

IV. CONCLUSION

For the foregoing reasons, the Commission must reject the Globalstar Petition and uphold the revised band plan set forth in the *Big Leo Spectrum Sharing Decision*.

Respectfully submitted,

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